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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 249.

PIERRE NOUGUÉ, APPELLANT,

vs.

EMORY CLAPP, LUCIEN CAMBRE, AND A. C. BABCOCK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED OCTOBER 9, 1877.

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INDEX.

	Original.	Print.
Bill of complaint	1	1
Subpœna in chancery to Emory Clapp	17	5
Subpœna in chancery to Lucien Cambre	18	6
Subpœna in chancery to A. C. Babcock	20	6
Exception of Emory Clapp	22	7
Entry at rules	23	8
Peremptory exception	23	8
Demurrer	25	8
Plea in bar	27	9
Entry at rules	30	10
Motion and order, case fixed	31	10
Rule	31	11
Order continuance	33	11
Submission of plea, demurrer, &c	33	11
Decree, demurrer sustained	34	12
Judgment	35	12
Motion and order for appeal	35	12
Bond for appeal	35	13
Clerk's certificate	39	13
Citation	40	14

1 *Bill of Complaint.—Filed April 24th, 1877.*

UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit, and district of Louisiana.

PIERRE NOUGUÉ
vs.
EMORY CLAPP ET ALS. } No. 7852.

To the honorable W. B. Woods, judge of the circuit court of the United States for the fifth circuit and district of Louisiana:

Pierre Nougué, an alien, and a citizen of the French Republic, born in Allset Bass Pyrennes, France, temporarily residing in the city of New Orleans, in the State of Louisiana, brings this his bill in equity to annul a judgement rendered on the eleventh day of January, 1875, by the Hon. fourth judicial district court of Louisiana, then holding a session, or
2 holding sessions in the parish of St. John the Baptiste, also to annul a sale of a sugar plantation, made by Lucien Cambre, sheriff of said parish, and Emory Clapp, plaintiff in the suit of Emory Clapp vs. O. Schesxueyder et als., No. 578 of the docket of said 4th judicial district court, in the parish of St. John the Baptiste, in which suit said judgement was rendered, and also for damages against Emory Clapp, Lucien Cambre, sheriff as aforesaid, and A. C. Babcock, clerk of said court, all of whom are American citizens, and citizens of the State of Louisiana, Lucien Cambre and A. C. Babcock residing in the parish of St. John the Baptiste, and Emory Clapp residing in the city of New Orleans, in the State and district aforesaid.

And therein and therefore your orator complains and shows that on the 23d day of January, 1868, he purchased by notarial act, duly recorded, of Theophile Perret, Mrs. Martial Le Boeuf, and Mrs L. Leon Bernard the tract of land and improvements thereon, and all
3 stock and appurtenances thereto belonging described in said act of sale and in the following printed advertisement:

Sheriff's sale.

STATE OF LOUISIANA,
Parish of St John the Raptist:

EMORY CLAPP
vs.
O. SHEXUEYDER BROS. & OTHERS. } No. 578.

James D. Augustine & Percy Roberts, att'ys for plaintiff.

By virtue of and in obedience to a writ of seizure and sale, bearing date January 29th, 1875, and to me directed by the honorable, the fourth judicial district court of the State of Louisiana, in and for the parish of Saint John the Baptist, in the above entitled and numbered suit, I have seized and will proceed to sell at public auction at the courthouse of this parish, on Saturday, the 7th day of August, A. D. 1875, at 12 o'clock m., the following described movable and immovable property, to wit:

4 A certain tract of land cultivated as a sugar plantation, situ-

ated in this parish of St. John the Baptist, on the right bank of the Mississippi River, measuring twelve arpents, more or less; front on said river by a depth of one hundred arpents, more or less; bounded above by the property of Joseph Girod or assigns, and below by that of Dominique and F. Berthelot; together with all the buildings and improvements, rights, ways, and privileges thereto belonging or in anywise appurtaining, sugar-house, machinery, steam engine, sugar-mill, stables, dwelling-houses, &c.

Also together 20 mules, 4 large, (three mules) carts, 2 small (one mule) carts, about 60 arpents of stubble cane, about 38 arpents of plant cane, and about 40 arpents of corn.

And a lot of movable effects and farming utensils. The whole lot to be sold in block.

Terms: Cash in U. S. Treasury notes.

Sheriff's office, parish of John the Baptist, July 3d, 1875.

5 LUCIEN CAMBRE,
Sheriff.

for the price of fifteen thousand dollars.

That as representing a part of the purchase price of said property, Pierre Nougué, your orator, subscribed, endorsed and delivered to his said vendors four certain promissory notes for two thousand dollars each, two of them payable two years after date, and the other two notes payable six years after date, all of them bearing interest.

Your orator further says, that by notarial act, duly recorded, he sold said property on the 2d day of October, 1869, to Octave, Onisiphon, and Elysie Schexueyder (Brothers) for the price of thirty thousand dollars, and that said Schexueyder Brothers, have had possession of said plantation and property, and have been cultivating the same ever since their said purchase of the same. That in deduction of the price of said sale, said Schexueyder Brothers, promised and bound themselves to pay in the place and stead of said Pierre Nougué, their vendor
6 said four notes for two thousand dollars each with interest, given by said Pierre Nougué to his vendors as aforesaid, and that said Schexueyder Bros., by said act of sale, of date the 2d day of October, 1869, assumed the special mortgage granted by said act of sale of the 23d of January, 1868, to secure the payment of the said four notes of two thousand dollars each.

And your orator further shows that he is the owner of one note for fourteen thousand dollars, with interest, described in the act of sale of date October 2d, 1869, said note being subscribed and was delivered by said O. O. & E. Schexueyder, made payable to their own order and by them endorsed, and payable on the thirty-first day of January, 1875, as stated in said act of sale, with six per cent. per annum interest thereon from date.

Your orator is also owner of three other promissory notes for the sum of eight hundred and forty dollars each, also described in said act of sale of date October 2d, 1869. That all of said four above
7 described notes were and are secured by mortgage duly recorded, on the plantation and property herein before described, and said three last above described promissory notes for $840 each, were made payable on the 31st day of January, in each year respectively of 1873, 1874, and 1875, and were, and are secured by mortgage and vendor's privelege as set forth in said act of sale of date the 2d day of October, 1869. That said four promissory notes owned by your orator as aforesaid, represent a part of the price of said plantation and property sold by Pierre Nougué to said Schexueyder Brothers, as per act of sale of

date October 2d, 1869, and the payments thereof are secured by mortgage, and the vendor's lien and privil'ge, resulting from the said sale and by the special mortgage consented to in said act of sale by the said Schexueyder Brothers.

And your orator avers, that all four of the notes subscribed by your orator the said Pierre Nougué, and sued on by Emory Clapp, in the suit of Emory Clapp, vs. O. Schexueyder Brothers and others, being
8 suit, No. 578, of the docket of the 4th judicial district court of Louisiana, for the parish of St. John the Baptiste have been paid and extinguished by and for the account of said Schexueyder Brothers, and in the full discharge of said Pierre Nougué by and in accordance with and in fulfillment of said Schexueyder Brothers' promises and obligations in said act of sale of date October 2d, 1869, to pay all of said notes described in said suit, in the place and stead and in discharge of said Pierre Nougué.

That said notes sued on in said suit of Emory Clapp vs. O. Schexueyder Brothers, as aforesaid, by executory process, were paid and extinguished by and for account of said Schexueyder Brothers, and with the funds of said Schexueyder Brothers.

That said suit and executory proceedings were and are fraudulent and illegal combinations between said Emory Clapp, and said Schexueyder Bros., to keep alive the said paid and extinguished notes,
9 and the mortgage securing their payment, so as to cut off Pierre Nougué in his recourse against the said plantation and property for the payment of the mortgage notes held and owned by him as aforesaid. That said Emory Clapp had and has no interest whatever in the notes sued on by him in said suit No. 578 aforesaid, because said notes were paid and extinguished for the account of and by said Schexueyder Bros., and the mortgage granted to secure the payment of said notes is likewise extinguished, and Pierre Nougué was and is thereby discharged from all liability on said notes and mortgage.

And your orator further says, that the order and judgment of this hon. the 4th judicial district court of Louisiana, in and for the parish of St. John the Baptist, in the suit and executory proceedings of Emory Clapp vs. O. Schexueyder and Brothers and others, being No. 578 of the docket of said court, and by virtue of which said plantation and property was seized, advertised for sale, and sold, was and is ab-
10 solutely null and void, ab initio. That said order and judgment is in words and figures following, to wit:

On reading the within petition and accompanying documents, let executory process issue as herein prayed for, and according to law, and the property within described be seized, advertised, and sold by the sheriff according to law.

Parish of St. John the Baptist, at chambers, January the eleventh, A. D. 1875.

(Signed) NUMA TRÉPAGUIER,
Parish Judge acting in the absence of O. J. Hagg, District Judge.

That Pierro Nauguè was named in said suit and proceedings as a defendant and was not cited.

That said order and judgment aforesaid were and are null and void, and of none effect, for the following additional reasons, and upon the following grounds, to wit:

That Pierro Nauguè is an alien, a citizen of the Republic of France, temporarily residing in the parish of Orleans, Louisiana.

11 That according to the laws of Louisiana (acts of 1861, and C P. art. 162), every person must be sued before the judge of his domicile, and that Pierre Nouguè now resides and has resided in parish of Orleans for more than three years last past, which residence is in the 1st judicial district, whilst he has been sued in said suit and proceedings in the parish of St. John the Baptist in the 4th judicial district of Louisiana.

That Pierre Nauguè was never notified of the protest of non payment of said notes sued on in said suit No. 578.

That according to the laws of Louisiana, C. P. arts. 739, 744, and 68 & 69, the principal debtor must have thirty days' notice of demand of payment prior to suit, and the third possessor must have ten more days' notice of demand of payment prior to suit.

That in this case said suit No. 578, Pierre Nauguè, the alleged principal debtor had seven days' notice only, after suit, and Schexneyder Brothers, the third possessors in actual possession, had three days' notice
12 only after suit; all in open violation of law.

That therefore said order and judgment were rendered on insufficient evidence, and under the laws and jurisprudence of Louisiana are null and void, and should be so declared.

Your orator further says that he applied to the hon. 4th judicial district court of Louisiana by petition, oath, and bond, and obtained an order of said court for an injunction to restrain said Emory Clapp from proceeding any further in and with said suit No. 578, and enjoining Lucien Cambre, sheriff, from selling said plantation and property then by him advertised for sale on the seventh day of August, 1875, at 12 o'clock m., as per printed advertisement herein.

That your orator gave good and solvent surety, according to law and the order of said court, and presented the petition, oath, and bond, signed with said surety, all in due form, and, as required by the order of said court and the law, to the clerk of said court Mr. A. C. Babcock, esqr.,
13 for him to file and issue process thereon, but said clerk after filing said document, of his own volition and in violation of the constitution and laws of Louisiana, and in violation of his duties imposed upon him by law and his oath of office, refused and did not issue process thereon.

That said Emory Clapp and said Lucien Cambre, sheriff, also knew of the nature and of the filing of said documents and proceedings, and the then the said sheriff, clerk, and plaintiff Clapp fraudulently combined and conspired together to deprive your orator of his legal rights in the said premises and to sell said plantation and property at all hazards, and in utter disregard of the said proceedings tendered and filed, and in violation of law and the legal and just rights of said Pierre Nauguè.

That through and by means of the fraudulent acts, conduct, combination and conspiracy of said Clapp, Cambre, and Babcock aforesaid, said plantation and property was sold on the said 7th day of August, 1875, and said Emory Clapp became the purchaser at said sale
14 for the small sum and price of ten thousand dollars.

That the sale of said plantation and property under said illegal and fraudulent proceedings have caused great injury and damage to your orator, and that the said sale by said Sheriff Cambre, in manner and form, and under the illegal proceedings aforesaid, was and is absolutely null and void, and of none effect.

That said plantation and property, and appurtenances thereunto belonging, at the time of said illegal sale, to wit, August 7th, 1875, was well and reasonably worth the sum of forty thousand dollars.

That in consequence of the unjust, illegal, and tortious acts, conduct, fraudulent combinations conspiracy, &c,, on the part of said Lucien Cambre, sheriff, A. C. Babcock, clerk, and Emory Clapp, plaintiff in suit No. 578, as aforesaid, and in manner and form as herein set forth, your orator has suffered damages in the full sum of twenty thousand dollars.

That your orator further says that he verily believes that he can-
15 not have justice in the said 4th judicial district court of Louisiana.

In consideration whereof, and inasmuch as your orator has not a complete and adequate remedy at law, to the end, therefore, that the said Emory Clapp, Lucien Cambre, and A. C. Babcock may full, true and perfect answer make to all and singular the premises and allegations herein, and that the said Emory Clapp, Lucien Cambre, and A. C. Babcock may be decreed in solido to pay to your orator the amount hereinbefore mentioned, to wit, twenty thousand dollars, with legal interest thereon from date of final decree herein; and that it mat be further decreed that the said notes sued on by said Emory Clapp, in said suit No. 578 of the docket of the 4th judicial district court of Louisiana in and for the parish of St. John the Baptist, and the mortgage securing the payment of said notes, have been extinguished by payment in manner set forth in this bill, and that said order and judgment of date January 11th, 1875, the advertisement of said plantation and property
16 for sale and the sale of said plantation and property were and are absolutely null and void, may it please your honors to grant unto your orator writs of subpœna to issue out of and under the seal of this honorable court to be directed to the said Emory Clapp, Lucien Cambre, and A. C. Babcock, therein and thereby commanding them and each of them on a day certain, and under a penalty to be therein named, personally to be and appear in this honorable court, then and there to answer all and singular the said premises and to stand to and abide such order and decree therein as to your honors, shall seem meet and shall be agreeable to equity and good conscience, and your orator will ever pray, &c.

(Signed) PIERRE NOUGUÈ.

(Signed) R. KING CUTLER,
Solicitor for Complainant.

Sworn to and subscribed before me this 24th day of April 1876.

(Signed) F. B. VINOT,
U. S. Commissioner.

17 *Subpœna in chancery to Emory Clapp.—Issued April 24th*, 1876.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon Emory Clapp, a citizen of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of June, 1876, then and there to answer a bill in chancery filed against him et al., wherein Pierre Nouguè an alien and a citizen of the French Republic, is complainant, and said Emory Clapp and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Morrison R. Waite, Chief Justice of the Su-

preme Court of the United States of America, this 24th day of
18 April, in the year of our Lord one thousand eight hundred and seventy-six, and the 100th year of American Independence.

[SEAL.] (Signed) F. B. VINOT,
Deputy Clerk.

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court on or before the first Monday of June, 1876; otherwise the bill may be taken pro confesso.

(Signed) F. B. VINOT,
Deputy Clerk.

Marshal's return.

Received April 24th, 1876, by the U. S. marshal, and on the 27th day of April, 1876, served a copy hereof on Emory Clapp by handing the same to him in person in this city.

(Signed) S. B. PACKARD,
U. S. Marshal.
By C. R. STEELE,
Deputy.

Subpœna in chancery to Lucien Cambre.—Issued April 24th, 1876.

UNITED STATES OF AMERICA:

19 The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon Lucien Cambre, a citizen of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of June, 1876, then and there to answer a bill in chancery filed against him et al., wherein Pierre Nouguè, an alien and a citizen of the Freneh Republic, is complainant, and said Lucien Cambre et al. are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 24th day of April, in the year of our Lord one thousand eight hundred and seventy-six, and the 100th year of American Independence.

[SEAL.] (Signed) F. B. VINOT,
Deputy Clerk.

20 The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court on or before the first Monday of June, 1876, otherwise the bill may be taken pro confesso.

(Signed) F. B. VINOT,
Deputy Clerk.

Marshal's return.

Received Ap'l 24th, 1876, by the U. S. marshal, and on the 15th day of May, 1876, served a copy hereof on Lucien Cambre, within named,

by handing the same to him in person at the parish of St. John the Baptist. About 46 miles from New Orleans.

(Signed) S. B. PACKARD,
U. S. Marshal.
By J. B. STOCKTON,
Deputy Marshal.

Subpœna in chancery to A. C. Babcock.—Issued 24th April, 1876.

UNITED STATES OF AMERICA:

The President of the United States of America to the marshal for the district of Louisiana, greeting:

21 You are hereby commanded to summon A. C. Babcock, a citizen of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of June, 1876, then and there to answer a bill in chancery filed against him et al., wherein Pierre Nouguè, an alien and a citizen of the French Republic, is complainant, and said A. C. Babcock and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 24th day of April, in the year of our Lord one thousand eight hundred and seventy-six, and the 100th year of American Independence.

[SEAL.] (Signed) F. B. VINOT,
Deputy Clerk.

The defendant is hereby notified that he is required to enter his
22 appearance in the clerk's office of the United States circuit court, on or before the first Monday of June, 1876; otherwise the bill may be taken pro confesso.

(Signed) F. B. VINOT,
Deputy Clerk.

Marshal's return.

Received April 24th, 1876, by the U. S. marshal, and on the 15th day of May, 1876, served a copy hereof on A. C. Babcock within named, by handing the same to G. E. Sentell, his deputy. 46 miles.

(Signed) S. B. PACKARD,
U. S. Marshal.
By J. B. STOCKTON,
Deputy Marshal.

Exception of Emory Clapp.—Filed June 3d, 1876.

U. S. circuit court for the district of Louisiana.

PIERRE NOUGUÈ
vs. } No. 7852.
EMORY CLAPP ET AL.

Defendant, by undersigned counsel, now comes into court and declines the jurisdiction of the honorable court on the ground that *that* this

being an action to set aside and annul a formal judgment ren
23 dered by the honorable the fourth district court for the parish of St. John the Baptist, in this State, which said court had full concurrent jurisdiction of the subject-matter of and the parties to the said judgment can only be instituted in and passed on by the court which rendered said judgment.

Wherefore respondents pray that the demand of the plaintiff herein be dismissed, and for costs and general relief.

(Signed) PERCY ROBERTS,
Of Counsel.

Entry at June rules, 1876.

PIERRE NOUGUÈ
vs.
EMORY CLAPP ET AL. } No. 7852.

SATURDAY, 3D.

Emory Clapp, one of the defendants herein, has this day filed his exception to the complainant's bill of complaint.

Peremptory exception.—Filed Nov. 22d, 1876.

U. S. circuit court, &c., &c.

PIERRE NOUGUÈ
vs.
EMORY CLAPP ET AL. } No. 7852.

24 Now comes into court Emory Clapp, Lucien Cambre, and A. C. Babcock, defendants herein, who, in addition to the declinatory exception heretofore filed herein, now plead, by undersigned counsel, the following peremptory exception to the plaintiff's petition, to wit:

That the judgment of the fourth judicial district court for the parish of St. John the Baptist, in this State, rendered on the 18th day of November, 1875, upon a monition, and confirming and homologating the sale of the property (which property is fully described in plaintiff's petition) to Emory Clapp, defendant herein, made by the sheriff of said parish on the 7th day of August, 1875 (which said sale is now sought to be set aside and annulled in this suit), operates as a complete bar against all persons, and is full and conclusive proof that the said sale was duly made according to law.

(Signed) PERCY ROBERTS,
Attorney for Def'd'ts.

25 *Demurrer.—Filed Nov. 30th*, 1876.

Circuit court of the United States, &c., &c.

PIERRE NOUGUÈ
vs.
EMORY CLAPP ET AL. } No. 7852.

The demurrer of Emory Clapp, one of the defendants, to the bill of complaint of Pierre Nouguè, the above-named plaintiff.

The defendant, by protestation, not confessing all or any of the matters

and things in the plaintiff's bill of complaint contained to be true in such manner and form as the same is therein set forth and alleged, doth demur to said bill, and for cause of demurrer does show:

That this honorable court is without jurisdiction of this cause, for the reason that this being an action to annul and set aside a formal judgment rendered by the honorable the fourth district court for the
26 parish of St. John the Baptist, in this State, which said court had full jurisdiction of the subject-matters of and the parties to the said judgment, can only be instituted in and passed on by the court which rendered the said judgment.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, the defendant doth demur thereto, and humbly demands the judgment of this court whether he shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with his cost and charges in this behalf most wrongfully sustained.

I certify that in my opinion the foregoing demurrer of Emory Clapp, defendant, to the bill of complaint of Pierre Nouguè, complainant, is well founded in law, and proper to be filed in the above cause.

(Signed) PERCY ROBERTS,
Solicitor and of Counsel for Defendants.

27 Emory Clapp, being duly sworn, does depose and say that he has read the foregoing demurrer to the bill of complaint in this suit, and that the same is not interposed for the purpose of delaying said suit, or any proceedings therein.

(Signed) EMORY CLAPP.

Sworn to and subscribed before the undersigned, a commissioner of the circuit court, duly appointed and sworn by the circuit court of the United States in and for the district of Louisiana, at New Orleans, as witness my hand and seal at New Orleans this 30 Nov., 1876.

[SEAL.] (Signed) ANDREW HERO, JR.,
Commissioner of Circuit Courts.

Plea in bar.—Filed Nov. 30th, 1876.

Circuit court of the U. S. for the district of Louisiana.

PIERRE NOUGUÈ
vs.
EMORY CLAPP ET AL. } No. 7852.

28 The plea of Emory Clapp, defendant, to the bill of complaint of Pierre Nouguè, complainant.

This defendant, by protestation, not confessing or acknowledging the matters and things in said bill alleged to be true in such manner and form as the same are thereby set forth and alleged, for plea to the whole of said bill, or to so much and such part of said bill as prays for the annulment of a certain judgment and a certain public sale of property made in virtue of said judgment, which said judgment and sale are fully set forth and discribed in the said bill of complaint, does aver and say, that the judgment of the honorable the fourth judicial district court for the parish of St. John the Baptist, in this State, rendered on the 18th day of November, 1875, upon a monition, and confirming and

29 homologating the sale of certain property (which sale and which property are fully described in said bill of complaint) to Emory Clapp, defendant, made by the sheriff of said parish on the 7th day of August, 1875, operates as a complete bar against and has the force of a res adjudicata upon all persons, and is full and conclusive proof that the said sale was duly made according to law.

All of which matters and things this defendant does aver to be true, and does plead the same in bar to the whole of said bill; and this defendant humbly prays the judgment of this honorable court whether he ought to be compelled to make any further or other answer to said bill, and prays to be hence dismissed with his costs.

I certify that in my opinion the foregoing plea of Emory Clapp, defendant to the bill of complaint of Pierre Nouguè, complainant, is well founded in law.

(Signed) PERCY ROBERTS,
Solicitor and of Counsel for Defendant.

30 Emory Clapp, being duly sworn, doth depose that he has read the foregoing plea to the bill of complaint in this suit, and that the same is not interposed for the purpose of delaying said suit or any proceeding therein.

(Signed) EMORY CLAPP.

Sworn to and subscribed before the undersigned, a commissioner of the circuit courts, duly appointed and sworn by the circuit court of the United States in and for the district of Louisiana, at New Orleans: As witness my hand and seal, at New Orleans, this 30th Nov., 1876.

[SEAL.] (Signed) ANDREW HERO, JR.,
Commissioner of Circuit Courts.

Entry at rules.—Extract from chancery order-book, Thursday, Nov. 30th. November rules, 1876.

PIERRE NOUGUÈ
vs. } No. 7852.
EMORY CLAPP ET AL.

31 Emory Clapp, defendant to the bill of complaint, has this day filed his demurrer and a plea in bar to the said bill.

Motion and order—Case fixed.—Extract from minutes November term, 1876.

NEW ORLEANS,
Monday, January 22d, 1877.

Court met pursuant to adjournment; present, Hon. E. C. Billings, district judge.

PIERRE NOUGUÈ
vs. } No. 7852.
EMORY CLAPP.

In presence of counsel on both sides, the above case is assigned for trial on Monday, the 29th instant, at 11 o'clock a. m.

Rule.—Entered and filed January 26, 1877.

U. S. circuit court, &., &c.

PIERRE NOUGUÈ
vs.
EMORY CLAPP ET AL. } No. 7852.

On motion of Percy Roberts, solicitor for Emory Clapp, one of the defendants in the above-entitled suit, and on showing to the
32 court that on the 5th day of June, 1876, the plaintiff in this suit filed in this court the transcript of a certain case, removed by said plaintiff from the fourth judicial district court for the parish of St. John the Baptist, in this State, entitled, " Pierre Nouguè vs. Emory Clapp et als.," being No. 593 of the docket of said district court, and No. 7912 of the docket of this hon. court; and on further showing to the court that the said case, so far as said Emory Clapp, the present mover, is concerned, is between the same parties, has the same object and the same cause of action that this suit is and has, as will more fully appear from the said transcript of said case annexed as part hereof, it is therefore ordered that said plaintiff shows cause, on Monday, the 29th day of January, 1877, at 11 a. m., why he should not elect to prosecute either the said case or this suit, and why, when he shall elect in favor of one, the other shall not be dismissed.

Marshal's return.

33 Received January 26th, 1877, by the U. S. marshal, and on January 27th, 1877, served a copy of within motion & rule on R. King Cutler by handing the same to him personally.

(Signed) J. B. STOCKTON,
Deputy U. S. Marshal.

Order of continuance.—Extract from the minutes, November term, 1876.

NEW ORLEANS,
Wednesday, February 7th, 1877.

PIERRE NOUGUÈ
vs.
EMORY CLAPP. } No. 7852.

By consent the above cause was continued to the 15th instant at 11 a. m.

Submission of plea, demurrer, and exceptions.—Extract from the minutes, November term, 1876.

NEW ORLEANS,
Tuesday, February 27, 1877.

PIERRE NOUGUÈ
vs.
EMORY CLAPP. } No. 7852.

34 The demurrer, plea and motion to elect were this day taken up, and after hearing argument on both sides the court took time to advise.

Decree.—Demurrer sustained and bill dismissed.—Extract from the minutes, November term, 1876.

NEW ORLEANS,
Tuesday, March 20, 1877.

PIERRE NOUGUÈ
vs.
EMORY CLAPP ET AL. } No. 7852.

This cause came on to be heard on the plea in bar, exception, and demurrer to the complaina'ts bill, and was argued by counsel.

On consideration whereof it is ordered, adjudged, and decreed that the exception to jurisdiction of the court and demurrer be sustained, and complainant's bill dismissed with costs.

Judgment.—Extract from judgment book.

NEW ORLEANS,
Tuesday, March 20th, 1877.

35 PIERRE NOUGUÈ
vs.
EMORY CLAPP. } No. 7852.

This cause came on to be heard on the plea in bar, exception, and demurrer to complainant's bill, and was argued by counsel.

On consideration whereof it is ordered, adjudged and decreed that the exception to jurisdiction of the court and demurrer be sustained, and complainant's bill dismissed with costs.

Decree rendered March 20th, 1877.

Decree signed March 24th, 1877.

(Signed) EDWARD C. BILLINGS,
Judge.

Motion for appeal.—Entered and filed June 2d, 1877.

United States circuit court.

PIERRE NOUGUÈ
vs.
EMORY CLAPP ET AL.

On motion of B. Eagan and R. K. Cutler, solicitors for Pierre Nouguè, complainant in the above-entitled cause, and on suggesting to the
36 court that he is informed and believes that there is error to his prejudice in the final decree rendered in this cause on the 20th March, 1877, and signed on the 24th of March, 1877, that he is aggrieved by said final decree and is desirous of taking an appeal therefrom to the honorable Supreme Court of United States.

Therefore it is ordered by the court that Pierre Nouguè, complainant in the above cause, be allowed an appeal from the above decree returnable in the Supreme Court of the United States on 2d Monday in October next, on giving bond and security conditioned according to law in the sum of two hundred and fifty dollars.

Bond for appeal.—Filed June 2d, 1877.

UNITED STATES OF AMERICA:

Know all men by these presents, that we Pierre Nouguè as principal, and John Porte as surety, are held and firmly bound, jointly and severally, unto Emory Clapp, Lucien Cambre and A. C. Babcock, in
37 the sum of two hundred and fifty dollars, lawful money of the United States, to be paid to the said Emory Clapp, Lucien Cambre, A. C. Babcock, their heirs, executors, administrators and assigns, for which payment well and truly to be made we bind ourselves, and each of us by himself, and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated the 2d day of June, in the year of our Lord eighteen hundred and seventy-seven.

Whereas Pierre Nauguè has this day presented a motion to the honorable the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, praying an appeal from a final decree rendered against him on the 20th of March, 1877, and signed on the 24th of March, 1877, in the suit entitled Pierre Nauguè vs. Emory Clapp et als., No. 7852 of the docket:

Now the condition of the above obligation is such that if the
38 above-bounden Pierre Nauguè, appellant, shall prosecute his appeal to effect and satisfy whatever judgment may be rendered against him if he fail to make his appeal good, then this obligation to be void; otherwise the same shall remain in full force effect.

(Signed) P. NAUGUÈ. [L. S.]
(Signed) JOHN PORTE. [L. S.]

Corner of Marigny, Canal, and Bagatelle streets.

Signed, sealed, and delivered in presence of—
(Signed) F. B. VINOT.

Bond approved.

EDWARD C. BILLINGS,
Judge.

DISTRICT OF LOUISIANA, *ss:*

John Porte, surety on the within bond, being duly sworn, says that he resides in the city of New Orleans, Louisiana; that he is worth the sum of two hundred and fifty dollars over and above his debts and liabilities and property exempt from execution.

(Signed) JOHN PORTE.

Subscribed and sworn before me this 2d June, 1877.

F. B. VINOT,
U. S. Commissioner.

39 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 38 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial in the case of Pierre Nogué versus Emory Clapp et als., No. 7852 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 3rd day of September, A. D. 1877.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, Edward C. Billings, United States judge for the district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 3rd day of September, A. D. 1877.

EDWARD C. BILLINGS,
Judge.

40 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to Emory Clapp, Lucien Cambre and A. C. Babcock, greeting:

You and each of you are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a *a* motion and order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Pierre Nougué, *his* complainant and appellant, and you and each of you are defendants and appellees, to show cause, if any there be, why the judgment rendered against the said Pierre Nougué, as in said motion for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 4th day of June, in the year of our Lord one thousand eight hundred and seventy-seven.

EDWARD C. BILLINGS, *Judge.*

41 (Indorsed:) Emory Clapp. United States circuit court. No. 7852. Pierre Nougué vs. Emory Clapp et al. Citation.

Marshal's return.

Received Jun. 4, 1877, by the U. S. marshal, and on June 5th, 1877, served a copy of within citation by handing the same to Emory Clapp in person in this city.

DAN. A. ROSE,
D'y U. S. Marshal.

NEW ORLEANS, *June 6th*, 1877.

On this 6 day of June, 1877, personally appeared before me, the subscriber, Dan. A. Rose, a deputy U. S. marshal for the district of Louisiana, and makes oath that he served a copy of the within citation as stated in his official return hereon.

DAN. A. ROSE.

Sworn to and subscribed before me this 6th day of June, 1877.

F. B. VINOT,
U. S. Comm'r.

(Indorsement on cover:) No. 249. Pierre Nougué, appellant, vs. Emory Clapp, Lucien Cambre, and A. C. Babcock. Louisiana C. C. U. S. Filed 9th October, 1877.

Supreme Court of the United States.

PIERRE NOUGUE

versus

EMORY CLAPP, ET. ALS.

BENTINCK EGAN,
Solicitor for Complainant.

Clark & Hofeline, Brief Printers, 112 Gravier Street.

Supreme Court of the United States.

PIERRE NOUGUE

versus

EMORY CLAPP, ET. ALS.

STATEMENT OF THE CASE.

This is an appeal from a decree of the Circuit Court, for the Fifth Circuit and District of Louisiana, dismissing complainant's bill on demurrer.

Complainant alleges in substance that he is a citizen of the Republic of France, residing in New Orleans, and that the defendants are citizens of the State of Louisiana.

That on the 23d of January, 1868, he purchased by Notarial act, duly recorded, from Theophile Perrett, Mrs. Marshal Le Bœuf, and Mrs. L. Leon Bernard, a tract of land and improvements thereon, cultivated as a sugar plantation, situated in the Parish of St. John the Baptist, on the right bank of the Mississippi River, measuring twelve arpents more or less front on said river, by depth of one hundred arpents more or less, bounded above by property of Joseph Girod or assigns, and below by that of Dominique and F. Berthelot, for the price of $15,000; that as part of the purchase price he subscribed, endorsed and delivered to his said vendors four certain promissory notes for $2000 each; two of them payable two years after date, and two payable six years after date, all bearing interest; that by an act dated on the 2d of October, 1869, duly recorded, he sold said

plantation and improvements to Octave, Onisphore, and Elysie Schaexnayder (brothers), for the price of $30 000; that they have had possession and have been cultivating the same ever since said purchase; that in deduction of the price of said sale, said Schaexnayder brothers promised and bound themselves to pay in the place and stead of complainant, said four notes of $2000 each, with interest, given by your orator to his vendors.

That complainant is the owner of one note for $14,000, with interest, described in the act of sale of 2d October, 1869; said note being subscribed, endorsed and delivered by O., O. and E. Schaexnayder, and is payable on the 31st January, 1875, with six per cent. interest thereon, from date, and also of three other promissory notes for the sum of $840 each, also described in said act of sale of 2d October, 1869. That all of said notes were and are secured by mortgage duly recorded on said plantation and property hereinbefore described; the last three for $840 each, being payable on 1st January, 1873, 1874 and 1875, respectively; that said four notes owned by your orator as aforesaid, represent a part of the price of said plantation and property sold by him to Schaexnayder brothers, as per act of sale of October 2d, 1869; and the payments thereof are secured by special mortgage and vendor's lien.

That all of the four notes subscribed by your orator, and sued on by Emory Clapp, in the suit of Emory Clapp vs. O. Schaexnayder and brothers, and others, being suit No. 578, of the docket of the Fourth Judicial District Court, for the Parish of St. John the Baptist, have been paid, and extinguished by and for the account of said Schaexnayder brothers, by, and in accordance with their promises and obligations in the act of October 2d, 1869; that said suit and executory process were, and are fraudulent and illegal combinations between said Emory Clapp and Schaexnayder brothers, to keep alive said paid and extinguished promissory notes, and the mortgage securing their pay-

ment, so as to cut off your orator in his recourse against said plantation and property, for the paymnet of the mortgage notes held and owned by him as aforesaid; that said Emory Clapp has and had no interest whatever in the notes sued on in the suit No. 578, aforesaid, because said notes were paid and extinguished, for the account of, and by said Schaexnayder brothers, and the mortgage given to secure the payment of said notes, is likewise extinguished, and your orator was and is thereby discharged from all liability on said notes and mortgage.

Your orator further shows that the order and judgment of the Fourth Judicial District Court, in and for the Parish of St. John the Baptist, in the suit and executory proceedings of Emory Clapp vs. O. Schaexnayder brothers and others, No. 578 of the docket of said court, and by virtue of which said plantation was seized, advertised and sold, was and is absolutely null and void *ab initio;* that said order and judgment is in words and figures following, to-wit:

"On reading the within petition and accompanying documents, let executory process issue as herein prayed for, and according to law, and the property within described, be seized, advertised and sold by the sheriff, according to law.

Parish of St. John the Baptist, at Chambers, Jan. 11, 1875.

(Signed), NUMA TREPAGNIER,

Parish Judge acting in absence of O. J. Flagg, Dist. Judge.

That your orator was named in said suit as a defendant, and *was not cited;* that he is a citizen of the Republic of France, residing in New Orleans, and according to the laws of the State of Louisiana, C. P. 162, could only be sued in the Parish in which he resides. Here follows some other objection to the judgment which we omit.

He further shows that he applied to the Fourth Judicial District Court, and obtained an order for an injunction to restrain

said Emory Clapp from proceeding any further in said suit No. 578, and enjoining Lucien Cambre, Sheriff, from selling said plantation and property, then by him advertised for sale on the 7th of August, 1875, at 12 M., as per printed advertisement herein; that he gave good and solvent security according to law, and the order of said court; and presented said petition and order to A. C. Babcock, clerk of said court, for him to file and issue process thereon; but said clerk, after filing said document, of his own volition, and in violation of the Constitution and laws of Louisiana, and his oath of office, refused and did not issue process thereon.

That the said Emory Clapp and said Lucien Cambre, Sheriff, also knew of the nature and filing of said documents and proceedings, and the then sheriff, clerk and plaintiff, Clapp, fraudulently combined and conspired together, to deprive your orator of his legal rights in said premises, and to sell said plantation and property at all hazards; and in utter disregard of said proceedings, tendered and filed, and in violation of law and the legal and just rights of your orator. That through and by means of these fraudulent acts, conduct, combination and conspiracy of said Clapp, Cambre and Babcock, aforesaid, said plantation and property was sold on the 7th day of August, 1875, and said Emory Clapp became the purchaser at said sale, for the small sum and price of ten thousand dollars; that the sale of said plantation and property have caused great injury and damage to your orator; and that said sale, by said sheriff Cambre, in manner and form, and under the illegal proceedings aforesaid, was, and is absolutely null and void, and of no effect. That said plantation and property, and appurtenances thereunto, belonging at the time of said illegal sale, was well and reasonably worth the sum of $40,000; and that in consequence of the unjust, illegal and tortious acts, conduct, fraudulent combinations, conspiracy, etc., on the part of said Lucien Cam-

bre, Sheriff, A. C. Babcock, Clerk, and Emory Clapp, plaintiff in said suit No. 578, he has suffered damages in the full sum of $20,000.

He further says that he verily believes he cannot have justice in the Fourth Judicial District Court for the Parish of St. John the Baptist.

In consideration whereof and inasmuch as your orator has not a complete and adequate remedy at law, to the end, therefore, that the said Emory Clapp, Lucien Cambre, A. C. Babcock, may full, true and perfect answers make, to all and singular the premises and allegations herein, and that said Emory Clapp, Lucien Cambre and A. C. Babcock may be decreed to pay your orator the amount hereinbefore mentioned, to-wit, $20,000, with legal interest thereon from the date of final decree herein, and that it may be further decreed that the said notes sued on by Emory Clapp in said suit No. 578 of the docket of the Fourth Judicial District Court for the Parish of St. John the Baptist, and the mortgage securing the payment of the same have been extinguished by payment in the manner set forth in this bill, and that said order and judgment of date January 11th, 1875, the advertisement of said plantation for sale, and the sale thereof, were and are absolutely null and void. The bill then concludes with the usual prayer for subpœna, and is signed and sworn to by complainant. See bills, R. p. 1 to 5.

To this bill defendants appeared and filed three demurrers, one after the other, and a plea. The demurrers are in substance all the same, but were evidently intended to correct each other in-form; neither of the two first are in the form prescribed by the rules of the court, see Rule 31, but as the third is, we will give the substance of it, leaving out the formal part and the prayer is in substance, as follows:

That this Honorable Court is without jurisdiction of this cause, for the reason that this being an action to annul and set

aside a formal judgment rendered by the Honorable the Fourth Judicial District Court for the Parish of St. John the Baptist, in this State, which said Court had full jurisdiction of the subject matter of and the parties to the said judgment can only be instituted and passed on by the court which rendered the said judgment. See demurrer, R. pp. 8 and 9.

The decree on the demurrer is as follows: This cause came on to be heard on the plea in bar, exception and demurrer to the complainant's bill, and was argued by counsel.

In consideration whereof, it is ordered, adjudged and decreed, that the exception to the jurisdiction of the court and demurrer be sustained, and complainant's bill dismissed with costs.

Decree rendered March 20th, 1877.

Decree signed March 24th, 1877.

(Signed), E. C. BILLINGS,
Judge.

Record, page 12.

From this decree plaintiff appealed.

See motion and order of appeal, R. pp. 12 and 13.

ASSIGNMENT OF ERROR.

The court clearly erred in sustaining the demurrer and dismissing complainant's bill.

ARGUMENT.

The demurrer was to the whole bill, and necessarily admits the facts stated in the bill to be true. See Story's Equity Pleadings, 452; Mitford's Chancery Pleadings, by Jermy, 211 and 212; Livingston vs. Story, 9 Peters, 658; 1 Ves., Sr., 426; 1 Ves , Jr., 289.

The bill on its face makes out a clear case against the defendants and the court had an unquestioned jurisdiction of it under the 1st Section of the Act of 1875, 18, Statutes at large, p. 470.

The bill charges that the defendants fraudulently combined

and conspired together to keep alive the notes and mortgage described in the bill for the purpose of depriving complainant of his legal rights against the plantation and property on which he had a mortgage, to secure the payment of the four notes described in his bill, exceeding $16,000, exclusive of interest.

By the 32d Rule in equity, defendants were bound to answer that portion of the bill charging fraud and combination, explicitly denying the fraud and combination, which they have failed to do.

The plea we pass in silence because it is unsupported by evidence and was not passed upon by the court.

For these reasons we ask that the decree of the Circuit Court be reversed and that there be a decree in favor of plaintiff as prayed for in his bill.

Respectfully submitted,

BENTINCK EGAN,

Solicitor for Complainant.

OFFICE SUPREME COURT U. S.
FILED
APR 7 1880
D. W. MIDDLETON, Clerk.

Supreme Court of United States.

PIERRE NOUGUÉ
vs.
CLAPP ET AL.

No. 249.

Brief for Appellees.

P. PHILLIPS,
For Appellees.

R. O. POLKINHORN, Printer, Washington, D. C.

Supreme Court of United States.

PIERRE NOUGUÉ
vs. No. 249.
CLAPP ET AL.

Brief of P. Phillips for Appellees.

Nougué filed his bill in the Circuit Court, United States, for the Fifth Circuit and District of Louisiana, to annul a judgment rendered by the Fourth Judicial District Court, on the 11th January, 1875, and to set aside the sale of a sugar plantation seized and sold under said judgment.

The judgment is as follows:

"On reading the petition and accompanying documents, let executory process issue as herein prayed for, and according to law, and the property within described be seized and advertised and sold by the sheriff according to law."

The sheriff's sale was under the following advertisement:

"By virtue of, and in obedience to, a writ of seizure and sale bearing date 29th January, 1875, and to me directed by the Honorable the Fourth District Court, in the above-entitled cause (No. 578), I have seized and will proceed to sell at public auction, &c., the following described property."

The judgment in the Fourth District Court was rendered on four promissory notes, secured by mortgage, with confession of judgment Nougué had given when he pur-

chased the plantation described in the above advertisement, from Perret and others in 1868.

This bill alleges that these notes had been paid and extinguished by Shexueyder Brothers, to whom he had sold the plantation in 1869, according to his obligation contained in the act of sale to them; and that the suit and executory proceedings "were and are fraudulent and illegal combinations between Clapp and Shexueyder Brothers to keep alive the said paid and extinguished notes, and the mortgage securing their payment, so as to cut him off in his recourse against the said plantation for the payment of the mortgage notes held and owned by him."

In a previous part of the bill it is alleged that the sale made by the complainant to Shexueyder Brothers in 1869 was for the sum of $30,000, and that as a portion of the purchase money he held four promissory notes amounting in the aggregate to $16,520, secured by the mortgage.

The nullity of the judgment is averred on the following grounds:

That he was not cited in the suit of *Clapp* vs. *Shexueyder Brothers*, No. 578.

That he was not sued in the parish wherein he temporarily resided, he being an alien according to the law of the State.

That he was never notified of the protest of the notes sued on in the said suit.

That, according to law, the principal debtor was entitled to thirty days' notice of the demand of payment prior to suit, and the third possessor ten more days.

Instead of which, he, as principal debtor, had only seven days' notice after suit, and Shexueyder & Brothers, third possessors, but three days' notice.

The bill then alleges that he had applied for an injunction to the 4th District Court, restraining the sale under said judgment, and that the court had granted the same,

but that the sheriff, Cambre, Clerk Babcock, and Clapp had conspired to deprive him of his rights, and refused to issue process.

The bill prays for damages in the sum of $20,000 against said parties, and that it be decreed that the notes sued on by Clapp, in No. 578, together with the mortgage securing the same, have been extinguished, and the judgment and sale therein be annulled.

Clapp, the defendant in error, filed two exceptions:

First. That as the 4th District Court had full jurisdiction of the subject-matter and the parties, an action of nullity could only be instituted in, and passed on, by the court that rendered said judgment.

Second. That the judgment of the 4th Judicial District Court, on the 18th November, 1875, upon a monition confirming and homologating the sale of the property fully described in plaintiff's petition to Emery Clapp, defendant herein, made by the sheriff on 7th August, 1875, (which sale is now sought to be set aside and annulled in this suit,) operates as a complete bar against all persons, and is full and conclusive proof that the said sale was made according to law.

The matter of this exception is made the subject of a plea in bar in which the monition proceedings are distinctly set forth, their conclusiveness averred, and the plea concludes: "And this defendant prays the judgment of the court whether he ought to be compelled to make any further or other answer to said bill, and prays to be hence dismissed with costs."

A demurrer was also filed setting up the jurisdictional question involved in the first exception.

No replication or denial in any form was made to the exceptions or plea, and the same being submitted to the court and argued by counsel of both parties, the following decree was rendered:

"This cause came on to be heard on the plea in bar, exception, and demurrer, and was argued by counsel. On consideration whereof it is ordered, adjudged and decreed that the exception to the jurisdiction of the court and the demurrer be sustained and complainant's bill dismissed with costs." p. 12.

By the Code of Practice it is expressly provided that an action for the annulling of a judgment must be brought in the court that rendered it. Art. 608.

Nougué understood this, and his bill states that he did apply by petition to the 4th District Court, and obtained from it an order restraining Clapp from proceeding any further with the suit 578, and enjoining Cambre, the sheriff, from selling the property advertised for the 7th August, 1875.

This proceeding by Nougué in the proper State court was one by which his asserted rights could be fully vindicated.

It appears, notwithstanding the restraining order, the plantation was sold. How was this?

We have the extraordinary allegation in the bill that it resulted from the refusal of the clerk, Babcock, in violation of the law and the duties imposed upon him, to issue process on the restraining order.

The sale having taken place in August, 1875, and the purchase made by Clapp—and after the lapse of near two years—Nougué files this original bill in the Circuit Court of the United States, not on the discovery of any new matter, but upon the same grounds as constituted his petition for injunction in the Fourth District Court.

The sale having taken place contrary to the order of the court, by reason of a fraudulent combination between the clerk, the sheriff and Clapp, the purchase, as alleged in the bill, would have been set aside by a proper application to the Court, whose order had been violated.

So far as the bill informs us, Nougué made no effort before the State court to redress this wrong.

Under these circumstances, without discussing the question, whether, by reason of alienage, Nougué could, under any condition of the case, file a bill in the Circuit Court to annul a judgment rendered in the State Court, it is evident that he could not, by a new bill, again litigate the same matter as was involved in his petition to the State court, which possessed the full jurisdiction over the controversy.

Besides this, is the matter contained in the peremptory exception, p. 8, which sets up the monition proceedings by which the sale was homologated, and which was conclusive against all persons that the sale was made according to law.

Montgomery vs. *Samory*, 99 U. S., 482.

This is known as a peremptory exception, founded in law, filed at any stage in the cause, sufficient time being allowed to the adverse party to bring his evidence.

Code Prac., 345, 346.

As already stated, no attempt was made to controvert the exception by evidence.

The jurisdiction of the Circuit Court is sought to be sustained in the appellant's brief, under the first section of the Act of 1875, 3d March.

That section vests the Circuit Court with original cognizance, concurrent with the courts of the State, of controversies between citizens of a State, and foreign citizens or subjects.

The second section provides that in any suit of a civil nature, in law or equity, now pending or hereafter to be brought in a State court, involving such a controversy, either party may remove the same into the Circuit Court, and the cause shall then proceed in the same manner as if it had been originally commenced in said Circuit Court.

The third section specifies the condition on which the removal is to be made, to wit, petition, bond, &c.

The petition filed by Nougué in the 4th District Court for an injunction to restrain the sale on the judgment of January, 1875, shows a suit pending in the State court when the above act was passed, to which he was a party, and if such a cause was within the act, it could only be removed by compliance with the conditions of the third section.

The first section of the act, therefore, forms no ground for the filing of an original bill in the Circuit Court.

It is, therefore, submitted that the decree dismissing the bill must be affirmed.

P. PHILLIPS,
For Appellees.